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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,672	02/25/2004	Dale C. Gledhill	15272.35.1	3017
7590	01/26/2006		EXAMINER	
L. David Griffin WORKMAN, NYDEGGER & SEELEY 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			WILLIAMS, JAMILA O	
		ART UNIT	PAPER NUMBER	3722
DATE MAILED: 01/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/786,672	GLEDHILL, DALE C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jamila O. Williams	3722	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 17 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-5 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</li> <li>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>           Paper No(s)/Mail Date _____.</li> </ol> | <ol style="list-style-type: none"> <li>4)<input type="checkbox"/> Interview Summary (PTO-413)<br/>           Paper No(s)/Mail Date. _____.</li> <li>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6)<input checked="" type="checkbox"/> Other: <u>definition</u>.</li> </ol> |
|---|--|

## DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 as amended it is unclear how the limitations of the preamble further limit the claim. It appears from the preamble that the applicant is claiming a label system for use with a device, however in the body of the claim a selectively adjustable device is positively recited. The way the claim is drafted presents some uncertainty. A possible correction for the preamble could be, --A label system comprising--.

## *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by 2,790,587 to Contant. Contant discloses a selectively adjustable device comprising a first and second portion (1 and 2) retractively coupled together (the first and second portion are coupled together via element 13) and a label (3) having a first end and second end (fig 2) and an intermediate portion selectively adjustable between a

Art Unit: 3722

retracted position in which a portion of the intermediate portion is obscured and an extended position which at least a portion of the intermediate portion that was obscured is clearly seen (see figures 1-2, portion of label folded in an accordion fashion constitutes the intermediate portion of the label). Contant discloses having a portion of the label connected to the selectively adjustable device (4).

Regarding claim 2, Contant discloses that the intermediate portion comprises a folded portion (fig 1).

Regarding claim 3, Contant discloses that the intermediate portion comprises a first and second portion, the second portion being positioned beneath the first portion (fig 1).

Regarding claim 4, Contant discloses that the intermediate portion comprises an S-shaped portion (fig 1)

Regarding claim 5, Contant discloses that at least a portion of the intermediate portion is comprised of a flexible material (col. 2 lines 5-6).

Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by 5,363,955 to Fleenor. Fleenor discloses a device comprising a first and second portion (14 and 16), the second portion retractively coupled to the first portion (bottom and lid are retractively coupled by a hinge between open and closed position. In that retract is defined by Merriam-Webster as "to take back", moving or taking back the lid from open to closed positon satisfies the requirement). Fleenor further discloses a label (60) having a first and second end (66 and 62) and an intermediate portion selectively adjustable between

a retracted position in which a portion of the intermediate portion is obscured (when the panel is inside the lid) and an extended position in which at least a portion of the intermediate portion that was obscured is clearly seen (when the panel is withdrawn from the lid) and at least a portion of the label is connected to the device (fig 3).

### **Response to Arguments**

Arguments filed 10-17-2005 have been considered but are moot in view of new grounds of rejection

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3722

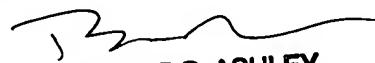
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila O. Williams whose telephone number is 571-272-4431. The examiner can normally be reached on Mon-Fri 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



  
BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER

JW 1/18/2006